



Robert W. Quinn, Jr.  
Senior Vice President  
Federal Regulatory

AT&T Services, Inc.  
1120 20<sup>th</sup> St., NW, Suite 1000  
Washington, DC 20036  
T: 202.457.3851  
F: 832.213.0243

October 4, 2007

EX PARTE VIA ECFS

Ms. Dana Shaffer  
Chief, Wireline Competition Bureau  
Federal Communications Commission  
445 12<sup>th</sup> Street, SW, 5<sup>th</sup> Floor  
Washington, DC 20554

Re: *Request for Review by AT&T Inc. of Decision of the Universal Service Administrator, CC Docket No. 96-45; Cingular Wireless LLC Request for Review of Decisions by Universal Service Administrator, CC Docket Nos. 96-45, 97-21*

Dear Ms. Shaffer:

Almost one year ago, AT&T Inc. (AT&T) filed with the Commission a request for review of the decision of the Universal Service Administrative Company (USAC) to approve the Final Audit Report of AT&T Communications.<sup>1</sup> Similarly, in March 2006 Cingular Wireless, now AT&T Mobility, filed with the Commission a request for review of USAC's Final Audit Report of Cingular Wireless.<sup>2</sup> On behalf of both of its wholly owned subsidiaries, AT&T asks that the Bureau or Commission act quickly to grant both appeals and, after reversing and remanding to USAC its incorrect audit findings, to direct USAC to close the underlying audits. Absent such closure, AT&T's entities continue to incur administrative expenses that would otherwise be directed toward advancing AT&T's competitive goals. Moreover, acting on AT&T's appeals will provide additional guidance to other carriers about their contribution obligations and will thus help to remove pricing disparities among competitors resulting from inconsistent interpretations of the Commission's Form 499-A and its accompanying instructions.<sup>3</sup>

Since AT&T and Cingular filed their appeals, the Commission and the Bureau have acted to address at least two of the issues raised in these appeals.<sup>4</sup> First, in its April 2007 revised instructions to the FCC Form 499-A, the Bureau directed wholesale providers to obtain annual re-certifications from their resellers. While AT&T had previously obtained reseller certifications from its resellers, one of USAC's audit findings against AT&T was that it had not done so on an annual basis. As a result, USAC erroneously reclassified certain of AT&T's "revenues as resellers" to "end-user revenues" thus making AT&T strictly liable when several of its resellers failed to contribute in whole or in part. In its appeal, AT&T correctly noted that the Commission and Bureau had never imposed an annual re-certification requirement on wholesale providers and that, while AT&T had no objection to collecting new reseller

---

<sup>1</sup> Request for Review by AT&T Inc. of Decision of the Universal Service Administrator, CC Docket No. 96-45 (filed Oct. 10, 2006) (AT&T Appeal).

<sup>2</sup> Cingular Wireless LLC Request for Review of Decisions by Universal Service Administrator, CC Docket Nos. 96-45, 97-21 (filed March 21, 2006). Although Cingular now does business as AT&T Mobility, for purposes of this *ex parte* filing, we will continue to refer to this entity as "Cingular."

<sup>3</sup> See, e.g., AT&T Appeal at 20 & n.65 (explaining how a competing prepaid calling card provider appears to interpret the Form 499-A instructions in a dramatically different manner from AT&T).

<sup>4</sup> Although not discussed in this letter, AT&T appealed several other USAC audit findings, including USAC's erroneous findings related to prepaid calling cards. For reasons detailed in the AT&T Appeal, the Bureau or Commission should reject these other incorrect USAC findings. See, e.g., AT&T Appeal at 13-20 (discussing USAC's incorrect prepaid calling card findings).

certifications each year on a going-forward basis, such a requirement must be applied to all underlying providers after appropriate notice.<sup>5</sup> Approximately six months after AT&T filed its appeal, the Bureau amended the Form 499-A instructions to do just that: wholesale providers are now required to obtain reseller certifications on an annual basis.<sup>6</sup> AT&T supports imposing this obligation on all carriers prospectively but imposing such a requirement retroactively and on just a single provider, as USAC suggests, is patently unfair and unlawful. Consequently, AT&T urges the Bureau to reject USAC's Detailed Exception Worksheet # 1.

Second, in its June 2006 *Contribution Methodology Interim Order*, the Commission took "an additional step" to clarify that wireless carriers that contribute based on traffic studies must report itemized charges for toll service as toll service revenue.<sup>7</sup> While such statements were made in the context of wireless carriers that use traffic studies versus wireless carriers that avail themselves of the safe harbor, such additional guidance is relevant to Cingular's pending appeal. As explained in its appeal, USAC asserted that Cingular inappropriately applied the wireless safe harbor to "toll" revenues in its 2002 499-A form, which covered calendar year 2001 revenues. During the period of time at issue, the Form 499-A instructions made no mention of excluding such revenues from the safe harbor. Indeed, the Commission's orders were quite clear that wireless carriers that use the safe harbor should do so for "their *total* cellular and broadband PCS telecommunications revenues."<sup>8</sup> As explained in Cingular's petition for declaratory ruling, while the Commission may, of course, change its policies going forward, it should declare that, given its prior safe harbor rulings, it will not apply any new rule prohibiting safe-harbor allocation of wireless toll revenues retroactively and will not seek back-payment of any increased contribution obligations that would arise from such retroactive application.<sup>9</sup> It would be particularly outrageous to apply later iterations of the Form 499-A instructions to Cingular's revenue filings made in prior years as USAC recommends in its Final Audit Report. In light of the Commission's recent clarification of this subject, made several months after Cingular filed its appeal, AT&T asks that the Bureau grant Cingular's appeal and find that USAC's retroactive application of 2003 Form 499-A instructions to Cingular's calendar year 2001 revenues was impermissible.

In the future, AT&T urges the Bureau to provide notice and comment on revisions to the Form 499-A instructions. As highlighted in AT&T's appeal, due to modifications made over the years, the instructions contain inconsistencies and the failure to provide notice and comment has led to the inclusion of language that is at odds with how a particular industry operates.<sup>10</sup> Moreover, due to the lack of notice of substantive changes, each contributor is required to scrutinize the 37 single-spaced pages of instructions for any changes. Failure to discern such a change and to incorporate it into the carrier's revenue reporting could subject that carrier to a USAC audit finding or, worse, an enforcement action. Several years ago, the Bureau sought comment on proposed changes to three forms used in the schools and libraries program, summarizing the key proposed revisions in the Public Notice.<sup>11</sup> This Public Notice

---

<sup>5</sup> See AT&T Request for Review at 8-13 & n.44.

<sup>6</sup> See Instructions to Telecommunications Reporting Worksheet, FCC Form 499-A (2007) at 19.

<sup>7</sup> See *Contribution Methodology Interim Order*, WC Docket No. 06-122, FCC 06-94, at para. 29 (2006).

<sup>8</sup> See *CMRS Safe Harbor Order*, 13 FCC Rcd 21252 at para. 13 (1998) (emphasis added). The Commission was similarly clear in orders issued subsequent to the period of the audit. See, e.g., *2002 Contribution Order*, 17 FCC Rcd 24952 at para. 24 (2002) (finding that "[m]obile wireless providers availing themselves of the revised interim safe harbor will be required to report 28.5 percent of their telecommunications revenues as interstate").

<sup>9</sup> See generally, Petition for Declaratory Ruling of Cingular Wireless LLC, WC Docket No. 06-122 (filed August 8, 2006).

<sup>10</sup> See, e.g., AT&T Appeal at 17-19 (discussing internal inconsistencies in the instructions that affect, for example, prepaid calling cards).

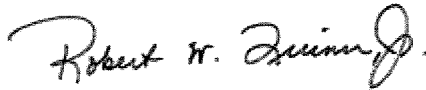
<sup>11</sup> *Wireline Competition Bureau Seeks Comment on Proposed Revisions to FCC Forms 472, 473 and 474*, CC Docket No. 02-6, Public Notice, DA 05-513 (rel. March 1, 2005).

was in addition to notice provided through the Federal Register because the Bureau determined that an additional opportunity to comment was warranted. AT&T recommends that the Bureau similarly seek comment on changes to the Form 499-A and its accompanying instructions and summarize the key proposed revisions in the notice or provide a redlined version of the proposed form and instructions. The Commission and the universal service fund can only benefit by having all providers understand and adhere to the same reporting requirements.

Delaying action on these appeals, which cover the company's historical 499-A filings, has several consequences. For example, if the Commission were to issue an adverse decision, which it plainly should not, and the company had to make a retroactive payment to the fund, it would have no ability to recover those contributions from its customers that were not previously surcharged. Such an outcome would be particularly unreasonable where, as here, AT&T and Cingular made good faith efforts to apply Commission precedent and if they had only interpreted the Form 499-A instructions differently, and in their view incorrectly, there would be no question about their ability to recover such contributions from their customers. Financial uncertainty, including the size of any potential payment to the fund, the expenses of cost recovery and its associated administrative costs, is only exacerbated by delay. Finally, without timely guidance from the Bureau or the Commission, carriers' inconsistent interpretations of their contribution obligations will create pricing disparities among competitors in the market.

For the reasons explained herein, AT&T urges the Bureau to act quickly to grant its pending USAC audit appeals and to direct USAC to close its underlying audits. Please do not hesitate to contact me with any questions.

Sincerely,

A handwritten signature in black ink, reading "Robert W. Quinn, Jr." with a stylized flourish at the end.

Robert W. Quinn, Jr.  
Senior Vice President  
Federal Regulatory

CC: Amy Bender  
Jeremy Marcus  
Jennifer McKee